

## NOTICE OF ADOPTION OF INTERIM LOCAL BANKRUPTCY RULES

NOTICE IS HEREBY GIVEN THAT the District of Alaska has adopted Interim Local Bankruptcy Rules 7008-1, 7012-1, 7016-2, 9027-1 and 9033-2. These rules go into effect on **September 1, 2012** and expire upon the expected promulgation of the amended Federal Rules of Bankruptcy Procedure effective **December 1, 2014**.

The following excerpt from the Report of the Advisory Committee on Bankruptcy Rules (May 14, 2012) on which the interim rules are patterned is provided for information and guidance.

Rules 7008, 7012, 7016, 9027, and 9033 would be amended to respond to the Supreme Court's recent decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011). In *Stern*, the Court held that a non-Article III bankruptcy judge could not enter final judgment on a debtor's common law counterclaim brought against a creditor of the bankruptcy estate. Although the Judicial Code, 28 U.S.C. § 157(b), deemed the counterclaim a "core" proceeding that a bankruptcy judge could hear and determine, the Court found Congress's assignment of final adjudicatory authority to the bankruptcy judge in the proceeding to be unconstitutional.

The Bankruptcy Rules follow the Judicial Code's division between core and non-core proceedings. The current rules contemplate that a bankruptcy judge's adjudicatory authority is more limited in non-core proceedings than in core proceedings. For example, parties are required to state whether they do or do not consent to final adjudication by the bankruptcy judge in non-core proceedings. There is no comparable requirement for core proceedings. *Stern* has introduced the possibility, however, that a proceeding defined as core under the Judicial Code may nevertheless lie beyond the constitutional power of a bankruptcy judge to adjudicate finally. Accordingly, a proceeding could be "core" as a statutory matter but "non-core" as a constitutional matter.

The Advisory Committee voted unanimously to seek publication of amendments to the Bankruptcy Rules that address this concern. The proposed amendments will alter the Bankruptcy Rules in three respects. First, the terms core and non-core will be removed from Rules 7008, 7012, 9027, and 9033 to avoid possible confusion in light of *Stern*. Second, parties in all bankruptcy proceedings (including removed actions) will be required to state whether they do or do not consent to entry of final orders or judgment by the bankruptcy judge. Third, Rule 7016, which governs pretrial procedures, will be amended to direct bankruptcy courts to decide the proper treatment of proceedings.

These amendments are not intended to take a position on the question whether party consent is sufficient to permit a bankruptcy judge to enter final judgment in a proceeding that would otherwise lie beyond the judge's adjudicatory authority. Instead, the proposed changes to the Bankruptcy Rules are designed to frame the question of adjudicatory authority and allow the bankruptcy judge to determine the appropriate course of action. The court must decide whether to hear and finally adjudicate the proceeding, whether to hear it and issue proposed findings and conclusions, or whether to take some other action.

INTERIM LOCAL BANKRUPTCY RULES  
[EFFECTIVE SEPTEMBER 1, 2012 THROUGH NOVEMBER 30, 2014]

**Rule 7008-1 Pleadings**

In an adversary proceeding before the bankruptcy court, the complaint, counterclaim, cross-claim, or third-party complaint must contain a statement that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court.

**Rule 7012-1 Responsive Pleadings**

In an adversary proceeding before the bankruptcy court, a responsive pleading must contain a statement that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court.

**Rule 7016-2 Pre-trial Procedures**

The bankruptcy court must decide, on its own motion or a timely motion by a party, whether—

- (1) to hear and determine the proceeding;
- (2) to hear the proceeding and issue proposed findings of fact and conclusions of law; or
- (3) to take some other action.

**9027-1 Notice of Removal**

A notice of removal must in all cases include a statement that the party does or does not consent to entry of final orders or judgments by the bankruptcy court.

**Rule 9033-2 Proposed Findings of Fact and Conclusions of Law**

In any proceeding in which the bankruptcy court lacks jurisdiction to enter final orders or judgments, the provisions of AK LBR 9033-1 apply.